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SFWS [ESA assessment for the RRPP/DPEIS]



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Response and Restoration
Silver Spring, Maryland 20910

September 10, 2003

Russell Watson
Acting Field Supervisor
U.S. Fish and Wildlife Service
646 Cajunome Blvd., Suite 400
Lafayette, LA 70506

Dear Mr. Watson,

The National Oceanic and Atmospheric Administration (NOAA), in cooperation with the U.S. Department of the Interior, Louisiana Oil Spill Coordinator's Office (Office of the Governor), and Louisiana Departments of Wildlife and Fisheries, Environmental Quality, and Natural Resources, has prepared a draft programmatic environmental impact statement (DPEIS) to the assist natural resource trustees in carrying out their natural resource damage assessment (NRDA) responsibilities for oil spills in the State of Louisiana. Consistent with Section 7 of the federal Endangered Species Act (ESA), we are writing to seek your concurrence with our determination that adoption of the preferred alternative is not likely to adversely affect threatened or endangered species and/or their critical habitat.

We have attached a copy of the DPEIS for your review. Below, we provide a summary of the proposed action, our analysis of the potential effects, and our conclusion regarding the effects of the action on threatened or endangered species and/or their critical habitat.

1.0 Description of the Proposed Action

The proposed action in the DPEIS would establish a statewide Regional Restoration Planning Program to facilitate NRDA activities under the federal Oil Pollution Act of 1990 (OPA) (33 USC 2701 *et seq.*) and the Louisiana Oil Spill Prevention and Response Act of 1991 (La. Rev. Stat. 30:2451 *et seq.*). These laws establish liability for a discharge or substantial threat of discharge of oil and authorize certain Federal and State agencies to act as natural resource trustees on behalf of the public. Regulations under OPA describe a process for the trustees to conduct a NRDA aimed at (1) returning natural resources and services to the condition they would have been in if the spill had not occurred and (2) obtaining compensation for interim losses of natural resources and services. For each spill, the trustees prepare a Damage Assessment and Restoration Plan/Environmental Assessment (DARP/EA) that describes the assessment of natural resource injuries and evaluates a range of restoration alternatives scaled to the nature, extent, and severity of the injury resulting from the specific spill.

One of the goals of the statewide program described in the DPEIS is to establish and clearly communicate procedures that will enable the trustees to carry out their NRDA activities in a more



predictable, consistent and efficient manner. The DPEIS also provides additional methods, techniques and analyses that can be used to expedite and reduce the costs of the NRDA and expedite resolution of claims (*e.g.*, cost and time savings could be achieved by the early identification of the types of restoration that are appropriate to restore “potentially injured resources/services”: expedited resolution of damage claims could be achieved by pooling individual case recoveries for future implementation of larger, more ecologically significant restoration projects).

The trustees anticipate that the statewide program will provide a framework for regional plans that the trustees will develop for each of the state’s nine regions. Each regional plan will identify resources that are likely to be injured by an incident, suitable types of restoration, and available restoration projects that may potentially be implemented at the local level. The analysis and information developed through the statewide and regional plans will be used in incident specific DARP/EAs prepared under OPA and the National Environmental Policy Act (NEPA). The trustees anticipate additional ESA consultations on the Regional Plans, as well as the DARP/EAs that will identify incident-specific restoration projects.

2.0 Analyses of the Potential Effects of the Proposed Action on Threatened or Endangered Species and/or their Critical Habitat

2.1 Threatened or Endangered Species and/or their Critical Habitat

As of February 26, 2003, twenty-nine animal and three plant species known to occur in the State of Louisiana were listed as either threatened or endangered under the ESA (see Appendix C of the DPEIS). Of these, the trustees are seeking “concurrence” with our determination for sixteen animal and three plant species under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). These species occur throughout the State in both coastal and inland habitats as follows:

Coastal	Inland	Entire State
manatee, West Indian (<i>Trichechus manatus</i>) (E)	chaffseed, American (<i>Schwalbea americana</i>) (E)	bear, Louisiana black (<i>Ursus americanus luteolus</i>) (T)
pelican, brown (<i>Pelecanus occidentalis</i>) (E)	<i>Geocarpum minimum</i> (T) (No common name)	eagle, bald (lower 48 States) (<i>Haliaeetus leucocephalus</i>) (T)
plover, piping (except Great Lakes watershed) (<i>Charadrius melodus</i>) (T)	mucket, pink (pearly mussel) (<i>Lampsilis abrupta</i>) (E)	woodpecker, red-cockaded (<i>Picoides borealis</i>) (E)
sea turtle, loggerhead (<i>Caretta caretta</i>) (T)	pearlshell, Louisiana (<i>Margaritifera hembeli</i>) (T)	
sturgeon, gulf (<i>Acipenser oxyrinchus desotoi</i>) (T)	tern, least (interior pop.) (<i>Sterna antillarum</i>) (E)	
sturgeon, pallid (<i>Scaphirhynchus albus</i>) (E)	tortoise, gopher (W. of Mobile, Tombigbee Rs.) (<i>Gopherus polyphemus</i>) (T)	
wolf, red (<i>Canis rufus</i>) (E)	turtle, ringed map (<i>Graptemys oculifera</i>) (T)	
	quillwort, Louisiana (<i>Isoetes louisianensis</i>) (E)	
	heelsplitter, inflated (<i>Potamilus inflatus</i>) (T)	

T = Threatened; E = Endangered

Critical habitat has been designated for 2 species, piping plover (*Charadrius melodus*) and gulf sturgeon (*Acipenser oxyrinchus desotoi*).

2.2 Assessment of the Implementation of Restoration Types on Threatened or Endangered Species and/ or their Critical Habitat

To facilitate public understanding of the NRDA process and future restoration planning activities during development of incident-specific DARPs, the DPEIS identifies types of restoration techniques commonly used to implement the types of restoration typically conducted to restore injuries resulting from oil spills in coastal and inland regions (see DPEIS Sections 3.2.5.1 and 3.2.5.2). Restoration techniques identified in the PDEIS include: vegetative planting; vegetative protection; hydrologic restoration; marsh management; dredge and fill; shoreline protection; faunal stocking; sediment diversion; freshwater diversion; outfall management; nutrient and sediment trapping, silviculture, land/substrate recontouring and rehabilitation and resource enhancement. The following is an analysis of how implementation of these restoration techniques may potentially adversely affect the habitat of federally listed species and designated critical habitat. The analysis remains necessarily broad because the proposed, preferred programmatic action does not authorize the implementation of a specific project, but provides a level of detail necessary to allow the use of information in this document in subsequent NEPA and OPA analysis (e.g., Regional Plans, DARPs/EAs).

2.2.1 Inland Restoration Techniques

Land/substrate re-contouring and rehabilitation (DPEIS Section 3.2.5.2.5.) and resource enhancement (DPEIS Section 3.2.5.2.6) techniques may increase turbidity and/or siltation in adjacent or nearby waterways, bays, etc., and potentially indirectly impact species by adversely affecting their food sources. Additionally, the techniques employed in this category may alter the plant species composition that colonize or inhabit pastures, or change the management regime of an existing area, and potentially adversely affect federally listed species such as *Geocarpum minimum*, Louisiana quillwort (*Isoetes louisianensis*), and American chaffseed (*Schwalbea americana*). Benefits to federally listed species are also likely to be realized since this category of restoration techniques is typically coupled with at least one other listed in the DPEIS. Resource enhancement may include methods of land management such as prescribed burns that are necessary for the control of understory and mid-story vegetation, and in the case of longleaf pine (*Pinus palustris*), to encourage growth. Due to fire suppression from the late nineteenth century to present, federally listed species, such as the gopher tortoise (*Gopherus polyphemus*), have lost their preferred habitat at alarming rates. By re-introducing fire as a management strategy, projects potentially undertaken through this programmatic effort could restore the preferred habitat for the above mentioned species. Seasonal restrictions can avoid disturbance to listed species during sensitive periods.

Silvicultural techniques (DPEIS Section 3.2.5.2.4) may remove significant portions of the vegetative strata and influence soil properties, thereby potentially increasing sedimentation into adjacent waterways from erosion and scouring of the substrate.

Removal of the various vegetative strata may also adversely affect the habitat of some species by altering soil and water temperature and chemistry. Heavy equipment used to carry out this technique may extirpate local populations of federally listed species or reduce their vigor. The examples of the detrimental effects of this technique can be avoided by using experienced construction personnel (e.g., equipment operators, environmental inspectors, etc.) to carry out the work and will likely not adversely impact listed species. In situations where this technique may adversely affect the water quality of an adjacent or downstream water body, precautions such as the installation of bridges over waterways, water bars, traversing trails for equipment, and tracked equipment may be used to greatly reduce the potential for impacts to federally listed species. Seasonal restrictions can avoid disturbance during sensitive periods (e.g., nesting).

Vegetative planting (DPEIS Section 3.2.5.2.1) and vegetative protection (DPEIS Section 3.2.5.2.2) will likely improve habitat for federally listed species. Future projects will only plant indigenous vegetation. Additionally, physical protection of the vegetation will ensure it persists throughout the life of the project or longer. If herbicides are used as a means of vegetative protection, only products scheduled for use in that habitat type will be used, and due diligence will be taken to ensure no adverse effects on terrestrial or aquatic animals and plants.

Hydrologic restoration (DPEIS Section 3.2.5.2.3) may potentially reduce and/or fragment the range of a federally listed species by isolating populations. There exists the potential to inundate some areas, thereby potentially affecting small localized populations. Some species, such as the Louisiana quillwort (*Isoetes louisianensis*), the Louisiana pearlshell (*Margaritifera hembeli*), and the inflated heelsplitter (*Potamilus inflatus*) may potentially be affected by any activity that would affect the hydrology or stability of the waterways in which listed species occur. Placing seasonal restrictions on the work performed could potentially mitigate these effects.

2.2.2 Coastal Restoration Techniques

Dredge and fill operations (DPEIS Section 3.2.5.1.5) can destroy habitat and result in mortality of smaller, less mobile individuals and certain embryos and eggs. It can disrupt nesting or foraging activities for the brown pelican (*Pelecanus occidentalis*), piping plover (*Charadrius melodus*), the gulf (*Acipenser oxyrinchus desotoi*) and pallid sturgeon (*Scaphirhynchus albus*), and the least tern (*Sterna antillarum*). In addition to the potential for direct take, channelization of inshore and nearshore areas can degrade foraging and migratory habitat through spoil deposition, degraded water quality/clarity, altered current flow, and changes in soil temperature and soil compaction. Dredging may have both direct and indirect impacts on the populations of the inflated heelsplitter (*Potamilus inflatus*) and the pink mucket (*Lampsilis abrupta*) through the inadvertent deposition of suspended sediment on adjacent bars or reefs. This material can potentially settle onto adjacent habitat and may suffocate the shellfish and make conditions unfavorable for recruitment. Positive effects of dredging on the brown pelican have occurred through the creation of habitat suitable for nesting. These projects have largely been implemented in the vicinity of Louisiana's barrier island chain.

Techniques that influence hydrology such as hydrologic restoration, marsh management, sediment diversion, freshwater diversion, outfall management, and nutrient and sediment trapping (DPEIS Sections 3.2.5.1.3, 3.2.5.1.4, and 3.2.5.1.8 through .11, respectively) may potentially reduce and/or fragment a federally listed species' range by isolating populations. Additionally, there exists the potential to inundate some areas, thereby potentially adversely affecting small localized populations. These techniques, while broad in application, can each benefit listed species, if implemented correctly, through the rehabilitation and restoration of wetland function in Louisiana's coastal zone.

Vegetative planting (DPEIS Section 3.2.5.1.1 and 3.2.5.2.1), shoreline protection (DPEIS Section 3.2.5.1.6 and 3.2.5.2.7), and resource enhancement (3.2.5.2.6) may potentially affect listed species in a number of ways which include, but are not limited to: not satisfying the habitat requirements of some species, causing excess pressure on a localized population, limiting access to foraging and nesting areas, the inadvertent introduction of exotic species, and decreasing the vigor or extirpating local populations. Benefits will likely include providing nesting and foraging sites for listed bird species, habitat protection, and increased productivity of both the system in which the technique is implemented as well as the nearby listed population.

2.2.3 Critical Habitat

Under the ESA, critical habitat refers to specific geographic areas that are essential for the conservation of a threatened or endangered species and may require special management considerations. A designation does not set up a preserve or refuge and only applies to situations where Federal funding or a Federal permit is involved. It has no regulatory impact on private landowners taking actions on their land that do not involve Federal funding or permits.

2.2.3.1 Critical Habitat for the piping plover (*Charadrius melodus*)

In Louisiana, there are seven units designated as critical habitat for the piping plover (*Charadrius melodus*): 1) Louisiana/Texas border to Cheniere au Tigre in Cameron and Vermillion Parishes; 2) Atchafalaya River Delta in St. Mary Parish; 3) Point Au Fer in Terrebonne Parish; 4) Isles Dernieres in Terrebonne Parish; 5) Timbalier Island to East Grande Terre Island in Terrebonne, Lafourche, Jefferson, and Plaquemines Parish; Mississippi River Delta in Plaquemines Parish; and 7) Breton Islands and Chandeleur Islands Chain in Plaquemines and St. Bernard Parishes.

Some restoration activities could have a temporary adverse effect on piping plover critical habitat. Such activities might include:

- dredging and dredge spoil placement;
- beach nourishment, stabilizations and cleaning; and
- marsh restoration.

Specific threats are likely unique to each area and are best addressed in recovery plans, management plans, and Section 7 consultations.

2.2.3.2 Critical habitat for the gulf sturgeon (*Acipenser oxyrinchus desotoi*)

Two of the fourteen units designated as critical habitat for the gulf sturgeon are located at least partially within the State of Louisiana. They are: 1) the Pearl River System in St. Tammany and Washington Parishes, and 2) Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, Jefferson, Orleans, and St. Bernard Parishes, respectively.

Restoration activities typically undertaken in Louisiana that may affect gulf sturgeon (*Acipenser oxyrinchus desotoi*) critical habitat may include, but are not limited to, the following:

- dredging;
- dredged material disposal; and
- freshwater diversions.

3.0 Effects of the Action on Threatened or Endangered Species and/ or their Critical Habitat

Implementation of natural resource restoration actions can affect threatened or endangered species and/or designated critical habitat. The analysis above describes the kinds of impacts – both adverse and beneficial – that can result from the restoration techniques typically used to compensate for natural resource injuries resulting from oil spills.

As stated and described above, the purpose of the DPEIS is to establish a statewide program to assist the trustees with carrying out their NRDA activities in a more predictable, consistent and efficient manner. Based on the nature of the proposed action and the analysis presented above, we have concluded that

establishing the proposed statewide program is not likely to adversely affect listed species or their critical habitat for the following reasons:

- (1) The DPEIS describes the NRDA process under OPA, the potentially affected environment (*i.e.*, the State of Louisiana), and restoration techniques typically employed to restore natural resources injured by oil spills. The DPEIS does not include or authorize any restoration projects or provide any restoration project standards, guidelines or selection criteria that are different from those provided under OPA.
- (2) In addition to the DPEIS, the statewide program will include nine regional plans that include region-specific information on listed species and their critical habitat, as well as restoration projects that can be implemented at the local level. A DARP that includes an analysis of specific restoration alternatives scaled to the nature, extent, and severity of the oil spill will be prepared for each incident. The Trustees are required to initiate appropriate consultation prior to adopting the Regional Plans and implementing any restoration action identified in a DARP to ensure that both the process and determination(s) are consistent with Section 7 of the ESA.
- (3) The trustees are not aware of any restoration project implemented in Louisiana under OPA that has resulted in the “taking” of a threatened or endangered species. This is due, in part, to project selection criteria established under OPA that requires the trustees to evaluate restoration alternatives and select preferred alternatives that “prevent future injury...and avoid collateral injury as a result of implementing the alternative” (15 CFR 990.54(a)(4)). This criterion requires the trustees to assess the impacts of proposed restoration alternatives on other natural resources, including ESA species, and establishes a clear preference for projects that do not have adverse impacts and potentially benefit federally listed species and designated critical habitat. During the informal consultation process between NOAA and the USFWS, language was added to the PEIS that further clarifies and strengthens this project selection criteria by requiring projects that have the potential to adversely affect listed, and/or designated critical habitat, to be designed in such a way to avoid those adverse effects. If this could not be achieved, the project would not be selected.
- (4) It is anticipated that any potential cumulative effects from the implementation of the statewide program would be beneficial to federally listed species in Louisiana because their habitats would either be enhanced or restored through this program.

We appreciate your efforts to review our analysis and conclusions regarding the effects of the proposed action on threatened or endangered species and/or their critical habitat. In addition to the attached DPEIS, we would be glad to provide any additional information that you may find necessary for your deliberations. If you have any questions, please contact Jim Hoff at (301) 713-3038 ext. 188.

Sincerely,



William Conner, Ph.D.
Chief, Damage Assessment Center

Attachment